

Dear Mr. O'Connell:

You have requested my opinion concerning the authority and jurisdiction of a county superintendent to hear an appeal by a teacher from the decision of the board of trustees refusing to renew the teacher's contract for the ensuing school year. You advise me that the teacher had been employed for more than three years. You also state that the teacher was granted a rehearing by the trustees who refused to change their previous decision.

Section 75-1518, Revised Codes of Montana, 1947, defines the authority of the county superintendent to decide school disputes and hear appeals as follows:

"He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts."

In *Kelsey v. School District*, 84 Mont. 453, 276 Pac. 26, the court considered the case of a teacher who was dismissed without cause and said:

"From the action of the board in discharging the plaintiff she had a plain, speedy and adequate remedy—by appeal first to the county superintendent, and having been unsuccessful in that, to the superintendent of public instruction. (*Peterson v. School Board*, 73 Mont. 442, 236 Pac. 670; *Kinzer v. Directors of Independent School Teachers of Marion*, 129 Iowa 441, 6 Ann. Cas. 996, 3 L. R. A. (n. s., 496, 105 N. W. 686.) It is unquestionably the policy of this state, as declared by the legislative assembly, that ordinary school controversies shall be adjusted by those who are specially entrusted with that duty. It is not the policy to encourage resort to the courts in such matters. So long as the school officers act legally and within the power expressly conferred upon them the courts

Opinion No. 47

Schools and School Districts—Appeal to County Superintendents—Teacher's Contracts—Teacher's Tenure

Held: A teacher who has three years of prior service and whose contract was not renewed must appeal to the county superintendent of schools and then to the state superintendent of public instruction before resorting to the courts for a review of the trustees action.

November 13, 1951.

Mr. Michael J. O'Connell
County Attorney
Gallatin County
Bozeman, Montana

will not interfere. (State ex rel. School District v. Trumper, 69 Mont. 468, 222 Pac. 1064.)”

In the more recent case of Eastman v. School District No. 1, 120 Mont. 63, 180 Pac (2d) 472, the rule announced in the Kelsey case was quoted with approval and it was stated:

“The rule is well settled in this jurisdiction that resort may not be had to the courts until adequate remedies by administrative boards have first been exhausted.”

An appeal by a teacher who was dismissed for cause before the expiration of a written contract must be taken to the county superintendent of schools under the provisions of Section 75-2411, Revised Codes of Montana, 1947. This section would not apply to the facts under consideration as it was the refusal to renew her contract which raises the question, and the appeal must be taken under the authority of Section 75-1518, Revised Codes of Montana, 1947. However, the teacher has the right to demand that the reason or reasons for dismissal be stated and a rehearing and reconsideration had, under Section 75-2401, Revised Codes of Montana, 1947, as amended by Chapter 166, Laws of 1949, before taking an appeal.

It is, therefore, my opinion that a teacher who has three years of prior service and whose contract was not renewed must appeal to the county superintendent of schools and then to the state superintendent of public instruction before resorting to the courts for a review of the trustees action.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General